

An agreement of facts, and submitting the questions to be decided, was filed on the 22d of July, 1851. All of which is fully stated in the opinion.]

THE CHANCELLOR:

I do not deem it necessary to express an opinion upon many of the questions which have been so fully and well argued at the bar by counsel, because in the view I have taken of the case, there is one objection to the title of the complainants to relief, which is altogether insuperable.

The question submitted by the agreement filed on the 22d inst., is, whether the alleged equitable lien of the complainants on the lands of the late John R. Dall can be maintained as against the defendant, McAttee, the purchaser of those lands? and for the purpose of raising that question, several facts have been agreed upon by the parties, and reference made to certain papers filed in the cause, which are to be taken as evidence, and have effect according to their true import and operation.

By the agreement it appears, that Mr. William Schley was, on the 13th of January, 1845, appointed by the decree of this court, trustee to receive and invest under its directions, the funds arising under the will of the late John McKim, jr., and that John R. Dall was surety in his bond as trustee. That on or after the period of his appointment, and prior to the date of the judgments under which the defendant, McAttee, purchased, Schley, as trustee, had received large amounts of the trust money, as specified in the complainant's bill, and that subsequently thereto, and prior to the date of said judgments, Schley agreed with Dall, to lend him \$12,000, part of said trust fund, and did some time in the year 1845, advance the sum of \$6,000, part of said sum of \$12,000, and agreed with Dall to apply the other \$6,000 to the payment of the judgment of one Jacob Albert, against said Dall, or as may be shown by the correspondence between Dall and Schley, filed in the cause, and which it was agreed should be considered as if regularly proved under a commission, and that Dall, some time in the year 1845, executed a mortgage to Schley, upon the lands now